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Attorneys for Plaintiff FINISAR CORPORATION

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

FINISAR CORPORATION, a Delaware  
corporation,

Plaintiff,

v.

U.S. BANK TRUST NATIONAL  
ASSOCIATION, a national banking  
association, not in its individual capacity but  
solely in its capacity as indenture trustee in  
behalf of all holders of Finisar Corporation's  
5¼% Convertible Subordinated Notes due  
2008, 2½% Convertible Senior Subordinated  
Notes due 2010, and 2½% Convertible  
Subordinated Notes due 2010; and DOES 1  
through 10, inclusive,

Defendants.

AND RELATED COUNTERCLAIMS.

Case No. 5:07-CV-04052-JF (PVT)

**STIPULATION AND [Proposed] ORDER  
TO RESOLVE MOTION TO  
(1) DISMISS, (2) STRIKE, AND  
(3) ADJUDICATE U.S. BANK TRUST  
NATIONAL ASSOCIATION'S  
COUNTERCLAIMS**

Impacted Hearing Date:

**Friday, July 11, 2008**

Time: **9:00 a.m.**

Courtroom: **3**

District Judge: Hon. Jeremy Fogel

Magistrate Judge: Hon. Patricia V. Trumbull

Initial Complaint Filed: June 22, 2007

Trial Date: Not Yet Set

1 WHEREAS, on March 19, 2008, plaintiff and counterdefendant Finisar Corporation  
2 (“Finisar”) filed in the above-captioned action (the “Action”) Plaintiff Finisar Corporation’s First  
3 Amended Complaint (the “Amended Complaint”);

4 WHEREAS, on April 18, 2008, defendant and counterclaimant U.S. Bank Trust National  
5 Association (“U.S. Bank”) responded to the Amended Complaint by filing in the Action  
6 Defendant and Counterclaim Plaintiff U.S. Bank Trust National Association’s Answer to First  
7 Amended Complaint and Counterclaims (the “Answer”);

8 WHEREAS, the Answer presents two counts (the “Counterclaims”) by way of  
9 counterclaim to the Amended Complaint;

10 WHEREAS, on May 8, 2008, Finisar filed in the Action Plaintiff Finisar Corporation’s  
11 Motion to (1) Dismiss, (2) Strike, and (3) Adjudicate U.S. Bank Trust National Association’s  
12 Counterclaims (the “Motion to Dismiss”), by which Finisar seeks dismissal and adjudication of  
13 the Counterclaims, and to have them stricken from the Answer;

14 WHEREAS, the Motion to Dismiss is presently set for hearing on July 11, 2008, at 9 a.m.;

15 WHEREAS, the parties have agreed to a resolution of the issues presented by the Motion  
16 to Dismiss; and

17 WHEREAS, as part of the agreed-upon resolution of the issues presented by the Motion to  
18 Dismiss, Finisar consents to U.S. Bank’s filing of Defendant and Counterclaim Plaintiff U.S.  
19 Bank Trust National Association’s Amended Answer to First Amended Complaint and  
20 Counterclaims (the “Amended Answer”) in the form attached as Exhibit “A” hereto.

21 NOW THEREFORE, it is stipulated and agreed by the parties that, subject to the approval  
22 of this Court,

- 23 1. The Motion to Dismiss shall be withdrawn, and the July 11, 2008 hearing date for  
24 the Motion to Dismiss vacated;
- 25 2. U.S. Bank shall amend its Answer by filing the Amended Answer;
- 26 3. Finisar’s time to respond to the Answer shall be tolled until U.S. Bank files its  
27 Amended Answer (from which time Finisar shall cease to have any obligation to  
28 respond to the Answer); and

1.

4. Finisar shall have twenty (20) days from U.S. Bank's filing and service of its Amended Answer to respond to any counterclaims pleaded therein.

Dated: June 27, 2008

**MORRISON & FOERSTER LLP**

D. Anthony Rodriguez  
Eva K. Schueller

**FAEGRE & BENSON LLP**

Michael B. Fisco  
Edward T. Wahl  
Abby E. Wilkinson

By /s/ Edward T. Wahl  
Edward T. Wahl

Attorneys for Defendant,  
U.S. BANK TRUST NATIONAL ASSOCIATION

Dated: June 27, 2008

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Sterling A. Brennan  
L. Rex Sears

**BERGESON, LLP**

Caroline McIntyre

By /s/ L. Rex Sears  
L. Rex Sears

Attorneys for Plaintiff,  
FINISAR CORPORATION

I attest that concurrence in the filing of the foregoing document has been obtained from the identified signatories thereof.

DATED: June 27, 2008

Sterling A. Brennan  
L. Rex Sears  
WORKMAN NYDEGGER A PROFESSIONAL CORPORATION

Caroline McIntyre  
BERGESON, LLP

By /s/ L. Rex Sears  
L. Rex Sears

Attorneys for Plaintiff FINISAR CORPORATION

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Hon. Jeremy Fogel  
United States District Judge

2.

**CERTIFICATE OF SERVICE**

I hereby certify that on June 26, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:  
D. Anthony Rodriguez, drodriguez@mofo.com; Abby E. Wilkinson, awilkinson@faegre.com;  
Eva K. Schueller, eschueller@mofo.com; Michael B. Fisco, mfisco@faegre.com; and Paul T. Friedman, pfriedman@mofo.com.

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